

P.E.R.C. NO. 2016-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ENGLEWOOD,

Petitioner,

-and-

Docket No. SN-2015-053

IBT LOCAL 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the City of Englewood's request for a restraint of binding arbitration of a grievance filed by IBT Local 11. The grievance contests the City's termination of a waste collection route and reassignment of grievant without permitting him to exercise seniority bumping rights. The Commission holds that the City's reassignment based upon employee qualifications is a non-negotiable managerial prerogative that outweighs grievant's interest in utilizing seniority rights.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Genova Burns & Giantomasi,
attorneys (Joseph M. Hannon, of counsel)

For the Respondent, Kroll Heineman Carton, attorneys
(Curtiss J. Jameson, of counsel)

DECISION

On February 25, 2015, the City of Englewood (City) filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters Local No. 11 (Local 11). The grievance asserts that the City violated the collective negotiations agreement (CNA) when it terminated a waste collection route and reassigned the grievant without allowing him to exercise seniority bumping rights.

The City has filed a brief, exhibits and the certification of the Director of the City's Department of Public Works (DPW

Director). Local 11 has filed a brief only.^{1/} These facts appear.

Local 11 represents all employees in the City's DPW, excluding supervisors, clerical employees, and confidential administrative support employees. The City and Local 11 are parties to a CNA in effect from January 1, 2013 through December 31, 2015. The grievance procedure ends in binding arbitration.

Article 3, SENIORITY, Section 6 provides:

Should an employee's job be abolished, or a complete unit be closed down within the Department of Public Works[,] the employee will have the right to replace another employee with less seniority within the same job classification and grade. Provided he is qualified to do the job, the employee with the lesser seniority may then replace an employee with less seniority in a different job classification in the same or lower grade. In addition, due to the specialized nature of the work, employees in Central Maintenance and the Shade Tree Unit will not be replaced by employees from other units. Should the job be re-established, the employee(s) previously holding that job and who have continued in their employment as members of the Department of Public Works in a satisfactory manner, shall be given first consideration for the position(s) should the position(s) be re-established in five (5) years.

^{1/} Pursuant to N.J.A.C. 19:13-3.6(f)1, "[a]ll briefs filed with the Commission shall...[r]ecite all pertinent facts supported by certification(s) based upon personal knowledge."

According to the DPW Director's certification, the City is divided into four wards. As of July 2014, the City maintained two separate garbage collection routes - rear-yard collection and curbside collection. In two of the City's wards, rear-yard collection was performed by a curbside collection crew. In the other two wards, the City used a separate truck dedicated solely to rear-yard collection. The DPW Director certified that on or around July 24, 2014, upon review of its garbage collection policies, the City determined that using a separate truck dedicated solely to rear-yard collection was inefficient and a waste of resources because it required special equipment for a job that could be performed by a truck already in service.

Thereafter, according to the DPW Director, the City implemented a pilot program that allowed a curbside crew to collect garbage along the rear-yard route in order to determine if same would be as efficient as it was in the other two wards. Dedicated rear-yard collection employees - the grievant and another employee - were reassigned to the consolidated route. The DPW Director certified that this reassignment was based upon the City's determination that keeping the same crew along the consolidated route would improve efficiency given that the grievant and another employee had knowledge of the homes which subscribed to rear-yard collection service and would therefore be more capable of knowing which stops to make. After one month,

the success of the pilot program confirmed the City's supposition that rear-yard only collection was inefficient. As a result, according to the DPW Director, the City standardized rear-yard collection by curbside collection crews throughout all four wards and permanently reassigned the grievant to a consolidated route.

On July 28, 2014, Local 11 filed a grievance alleging that the grievant had the right to exercise seniority bumping rights over more junior employees to choose his route rather than simply being reassigned. The City denied the grievance at all steps. On December 12, 2014, Local 11 demanded binding arbitration. This petition ensued.

The City asserts that job assignments and waste collection routes are not subject to collective negotiations or arbitration given its managerial prerogative to assign employees to jobs in order to meet the governmental policy goal of matching the best qualified employees to particular jobs. In particular, the City argues that it may reassign personnel to different positions in order to deliver services without disruption and in the manner it deems to be most efficient. Here, the City determined that a different waste collection strategy was warranted and reassigned employees previously assigned to the old route to the new route in order to cut costs and save money.

In opposition, Local 11 asserts that the grievance at issue only concerns the City's failure to honor Article 3, Section 6 of

the parties' collective negotiations agreement which permits the grievant to exercise seniority bumping rights onto another garbage route or truck. Local 11 concedes that the grievance may have been inartfully worded and, clarifying that it is not seeking to stop, prevent or undo the City's change of routes or manner in which waste is collected, hereby amends the grievance to so state. Local 11 contends that although a public employer has a non-negotiable managerial prerogative to assign employees with job duties related to their normal job functions, concerns about health, safety, welfare and workload must be protected through negotiations and arbitration.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental

policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

The question that the Commission must consider here is whether the City's decision to reassign the grievant without allowing him to exercise seniority bumping rights over more junior employees so that he could choose his route is mandatorily negotiable. Under the circumstances, we find that it is not.

We have consistently held that management has a non-negotiable prerogative to make assignments within a negotiations unit based on its assessment of employee qualifications. Rutgers University, P.E.R.C. No. 84-45, 9 NJPER 663 (¶14287 1983); see also Essex County College, P.E.R.C. No. 83-78, 9 NJPER 49 (¶14024 1982). In Matawan-Aberdeen Reg. School Dist. Bd. of Ed., P.E.R.C. No. 97-131, 23 NJPER 337 (¶28153 1997), the grievant was a cafeteria aide who sought arbitration of the school board's decision to reassign her to a different school. After the least senior cafeteria aide was laid off, the grievant filed a grievance asserting that she had more seniority than another still-employed cafeteria aide and therefore was contractually entitled to stay at the school she wished. Therein we stated:

The Board reassigned personnel to ensure coverage at each school. The Board reassigned [the grievant] because she had worked at the middle school before. This transfer decision was therefore an exercise of the Board's managerial prerogative and arbitration of a grievance contesting that decision must be restrained.

[Matawan-Aberdeen, 23 NJPER at 337]

Here, the parties agree that the City has a managerial prerogative to review its garbage collection policies and reorganize collection routes. In so doing, the City reassigned the grievant to a consolidated route and specified that its decision was based upon an assessment that the grievant's placement would improve efficiency because he had specialized knowledge of the homes along the route which subscribed to rear-yard service. We find this to be an exercise of the City's non-negotiable prerogative to make assignments based upon employee qualifications. As in Matawan-Aberdeen Reg. School Dist. Bd. of Ed., the City's interest in reassigning the grievant based upon his familiarity with a certain route and its rear-yard collection subscriptions outweighs the grievant's interest in utilizing his seniority rights to select a different route. Local 195, supra.

Accordingly, the City's request to restrain arbitration is granted.

ORDER

The request of the City of Englewood for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Eskilson and Wall recused themselves. Commissioner Boudreau was not present.

ISSUED: September 24, 2015

Trenton, New Jersey